

## Environmental Protection Agency

## § 85.1413

(b) The records required to be maintained in paragraph (a) of this section shall be made available to the Agency upon the written request of the MOD Director.

(c) If the equipment certifier is selling equipment that is not certified as available to all affected urban bus operators under §§ 85.1403(b) and 85.1407, then the equipment certifier shall submit to EPA, at the time an offer is made, a copy of all offers made to affected urban bus operators for which the equipment certifier has offered to sell its certified equipment for less than the life cycle cost limits specified in § 85.1403(b)(1)(iii) or § 85.1403(b)(2)(iii). The equipment certifier may assert that some of the information is entitled to confidential treatment as provided in § 85.1414.

EFFECTIVE DATE NOTE: Information collection requirements in § 85.1412 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them.

### § 85.1413 Decertification.

(a) The MOD Director may notify an equipment certifier that the Agency has made a preliminary determination that certain retrofit/rebuild equipment should be decertified.

(1) Such a preliminary determination may be made if there is reason to believe that the equipment manufactured has failed to comply with §§ 85.1405 through 85.1414. Information upon which such a determination will be made includes but is not limited to the following:

(i) The equipment was certified on the basis of emission tests, and the procedures used in such tests were not in substantial compliance with a portion or portions of the heavy-duty engine Federal Test Procedure contained in 40 CFR part 86 or an alternative test prescribed under 40 CFR 85.1414; or

(ii) Use of the certified equipment is causing urban bus engine emissions to exceed emission requirements for any regulated pollutant; or

(iii) Use of the certified equipment causes or contributes to an unreasonable risk to public health, welfare or safety or severely degrades driveability operation or function; or

(iv) The equipment has been modified in a manner requiring recertification pursuant to § 85.1410; or

(v) The certifier of such equipment has not established, maintained or retained the records required pursuant to § 85.1412 or fails to make the records available to the MOD Director upon written request pursuant to § 85.1412; or

(vi) The life cycle cost of the equipment exceeds the limits specified in § 85.1403(b)(1)(iii) or § 85.1403(b)(2)(iii).

(2) Notice of a preliminary determination to decertify shall contain:

(i) A description of the noncomplying equipment;

(ii) The basis for the MOD Director's preliminary decision; and

(iii) The date by which the certifier must:

(A) Terminate the sale of the equipment as certified equipment; or

(B) Make the necessary change (if so recommended by the Agency); or

(C) Request an opportunity in writing to dispute the allegations of the preliminary decertification.

(b) If the equipment certifier requests an opportunity to respond to the preliminary determination, the certifier and other parties interested in the MOD Director's decision whether to decertify the equipment shall, within 15 days of the date of the request, submit written presentations, including the relevant information and data, to the MOD Director. The MOD Director, in his or her discretion, may provide an opportunity for oral presentations.

(1) Any interested party may request additional time to respond to the information submitted by the equipment certifier. The MOD Director upon a showing of good cause by the interested party may grant an extension of time to reply up to 30 days.

(2) The equipment certifier may have an extension of up to 30 days to reply to information submitted by interested parties. Notification of intent to reply shall be submitted to the MOD Director within 10 days of the date information from interested parties is submitted to the MOD Director.

(c) If an equipment certifier has disputed the allegations of the preliminary decisions, the MOD Director shall,

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after reviewing any additional information, notify the equipment certifier of his or her decision whether the equipment may continue to be sold as certified. This notification shall include an explanation upon which the decision was made and the effective date for decertification, where appropriate.

(d) Within 20 days from the date of a decision made pursuant to paragraph (c) of this section, any adversely affected party may appeal the decision to the Office Director.

(1) A petition for appeal to the Office Director must state all of the reasons why the decision of the MOD Director should be reversed.

(2) The Office Director may, in his or her discretion, allow additional oral or written testimony.

(3) If no appeal is filed with the Office Director within the permitted time period, the decision of the MOD Director shall be final.

(e) If a final decision is made to decertify equipment under paragraph (d) of this section, the certifier of such equipment shall notify his immediate customers that, as of the date of the final determination, the equipment in question has been decertified. The equipment certifier shall offer to replace decertified equipment in the customer's inventory with certified replacement equipment or, if unable to do so, shall at the customer's request repurchase such inventory at a reasonable price. The immediate customers must stop selling the equipment once the certifier has notified the customer that the equipment has been decertified.

(f) Notwithstanding the requirements of paragraph (e) of this section, equipment purchased by an urban bus operator prior to decertification, shall be considered certified pursuant to this subpart.

### § 85.1414 Alternative test procedures.

As a part of the certification process, as set forth in § 85.1406, a certifier may request that the Agency approve an alternative test procedure, other than the heavy-duty engine Federal test procedure, to show compliance with the 25 percent reduction in particulate matter emissions as noted in

§ 85.1403(b)(2)(i). The alternative test may be a chassis-based test, but the alternative test shall be representative of in-use urban bus operation. The requestor shall supply relevant technical support to substantiate its claim of representativeness. Upon an acceptable showing that an alternative test is representative of in-use urban bus operation, the Agency shall determine whether to set such alternative test procedures through rulemaking. The provisions of the certification process apply to such a request for alternative procedures.

EFFECTIVE DATE NOTE: Information collection requirements in § 85.1414 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them.

### § 85.1415 Treatment of confidential information.

(a) Any certifier may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR part 2, subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to the Agency.

(c) To assert that information submitted pursuant to this subpart is confidential, a certifier must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. In addition to the complete and identical copies submitted pursuant to § 85.1407(a)(6), the submitter shall also provide two identical copies of its submittal from which all confidential information shall be deleted. If a need arises to publicly release non-confidential information, the Agency will assume that the submitter has accurately deleted all confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in 40 CFR part 2, subpart B.